

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2015

Public Authority: Northamptonshire County Council

Address: County Hall
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant has requested information relating to the Local Government Shared Services ('LGSS') financial statements for the year to 31 March 2014. The Commissioner's decision is that Northamptonshire County Council has incorrectly applied the exemption for information provided in confidence at section 41 of the FOIA to the schedule listing all the invoices that make up the £10.97m year-end debtor balance and the five largest invoices by value.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - disclose the requested schedule and invoices. If the council chooses to redact information under the personal data exemption at section 40(2) it should provide the complainant with a valid refusal notice in accordance with section 17.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 30 November 2014, the complainant wrote to Northamptonshire County Council ('the council') and requested information relating to the LGSS financial statements for the year to 31 March 2014. The request is detailed in the annex to this decision notice.

5. The council responded on 18 December 2014. It provided narrative information in relation to the questions posed and applied the exemption at section 41 of the FOIA to the 'schedule listing all the invoices that make up the £10.97m balance' and 'copies of the five largest invoices by value' which were requested as part of question 3.
6. The complainant requested an internal review on 20 January 2015. He said that the response was unclear and he doesn't believe that the exemption at section 41 of the FOIA can apply. He posed further questions within the internal review request letter.
7. An internal review response was provided on 12 February 2015. The council maintained its original position in relation to section 41 and provided narrative information in response to the further questions posed.

Scope of the case

8. The complainant contacted the Commissioner on 12 April 2015 to complain about the way his request for information had been handled. He specifically requested that the Commissioner investigate in respect of the two pieces of information in question 3. He also requested that the Commissioner encourages meaningful answers to questions 1, 2, 4 and 5 to be provided.
9. In relation to the narrative responses to the questions posed, the Commissioner reminded the council that under the provisions of the FOIA it is not obliged to create information in order to satisfy an information request and as such, it is not required to provide the complainant with answers to questions if it does not already have the relevant information in recorded form. He commented that the answers the council provided to the complainant appear to have been made under its normal business procedures and not in respect of the provisions of the FOIA. He asked the council to revisit the questions and determine whether it holds recorded information which answers those questions and whether the information can be disclosed to the complainant. He said that where the council finds relevant recorded information and determines that this should be withheld, it should issue the complainant with a refusal notice under section 17 of the FOIA and in the event that the council finds that it holds no information which is relevant to questions posed, it should confirm this to the complainant and to the Commissioner.
10. The council's response to the Commissioner's enquiries confirmed that it does not hold any recorded information within the scope of the request over and above the LGSS Annual Report.

11. The Commissioner informed the complainant that once the council has communicated its reconsideration of whether recorded information is held which answers the questions posed, to inform him if there are any particular questions he would like pursuing, in terms of deciding, on the balance of probabilities, whether recorded information is held. Therefore the question of whether any further recorded information within the scope of the request exists outside the scope of this decision notice.
12. In the council's response to the Commissioner's enquiries it has mentioned the use of the exemption for personal data at section 40(2) of the FOIA. However, it has not supplied the Commissioner with the withheld information that constitutes personal data. Instead, it provided the schedule 'screened and redacted to remove third party personal data in line with s.40(2) FOIA 2000'. The council did not provide the Commissioner with any arguments as to the application of the personal data exemption. As such, the exemption at section 40(2) has not been considered in this decision notice.
13. The Commissioner has considered the council's application of section 41 to the schedule listing all the invoices and the five largest invoices by value.

Reasons for decision

Section 41(1) Information Provided in Confidence

14. This exemption provides that information is exempt if it was obtained by the public authority from any other person and the disclosure would constitute an actionable breach of confidence.

Was the information obtained from another person?

15. The first step is for the Commissioner to consider whether the information was obtained by the council from any other person in order to satisfy the requirement of section 41(1)(a).
16. In his enquiries to the council, the Commissioner asked the council to identify which third party provided it with the withheld information and pointed out that the complainant has alleged that the requested invoices have been generated by the council.
17. The council responded as follows:

"The information isn't provided by a third party, it is the details of third parties who are now debtors to us, as a result of non payment for services received or entered into. It is a case of us generating the

information as a result of the transactions which we enter into with third parties of which this group is now the subject matter.

NCC did generate the invoices, but, as above, as a result of transactions with third parties. It is the fact that those invoices remain unpaid and hence the third parties have become debtors, which we have the issue with in terms of sharing information. The exemption here should be s.40 (2) personal information; as [complainant's name redacted] is not issuing us with a s.29(3) to exempt the provision of the information we would not be in a position to disclose it."

18. In deciding whether information has been 'obtained from any other person', the Commissioner will focus on the content of the information rather than the mechanism by which it was imparted and recorded.
19. In this case the council has clearly stated that the information was not obtained from any other person. The Commissioner does not consider that the content of the information has been provided by a third party. Therefore the exemption at section 41 cannot apply. As such the Commissioner has not gone on to consider whether the disclosure would constitute an actionable breach of confidence.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"I would like to ask some questions under FOI about the LGSS financial statements for the year to 31 March 2014, which are rather difficult to understand.

Q1) Grant income/funding from host authorities

- In the draft accounts version of the Comprehensive Expenditure and Income Statement (CIES), the item "*Taxation and Non-Specific Grant Income*" of £23.621m appears below the cost of services total under the heading "*Other operating expenditure*", alongside the £700k dividend payment.
- In the final audited accounts the same item, which is elsewhere identified as "*Government grants and contributions*", is included within "*Cost of Services*". In Note 4 it is included under trading income, but in Note 10 it is set apart from the six named directorate categories and described as "*Funding from host authorities*".

Can you please explain the nature of this funding income? Is it income resulting from LGSS issuing invoices to its customers for the provision of goods or services, in which case why was it shown below the cost of services total in the draft accounts? Or is it unrelated to trading and just represents a funding subsidy to keep LGSS afloat, in which case why does it contribute towards the *Deficit on Provision of Services* in the (CIES)? If the latter, what determines the size of that funding, and can LGSS therefore legitimately describe itself as a business? The nature of this income also has implications when calculating the debtor days accounting ratio (see below).

Q2) Debtors and debtor days

The debtor days accounting ratio is defined as trade debtors revenue (sales) x 365

For LGSS at 31st March 2014 the ratio is:

$(10,970/38,455) \times 365 = 104.2$ days in the draft accounts, or

$(10,970/62,066) \times 365 = 64.5$ days in the audited accounts.

Both are very high, especially considering that LGSS's customers are all effectively inter-company, and therefore controlled by LGSS. Without the 65% rise in debtors (£4.3m) with respect to the year before, the debtor days would have been 63.1 days and 39.1 days in the draft and final accounts respectively.

Which of the debtor days (104.2 or 64.5) most accurately represents LGSS's performance in recovering its commercial debts?

Q3) What is in the year end debtor balance?

The draft accounts include the following comment about the £10.97m year-end debtor balance:

"The debtors balance is high in 2013-14 due to the timing of the invoicing on one of the LGSS contracts."

Which contract does this comment refer to, and how was it different to the previous year? Does the invoice refer to goods or services relating wholly or in part to 2014/15? Can you please provide a schedule listing all the invoices that make up the £10.97m balance, and provide copies of the five largest invoices by value from that list?

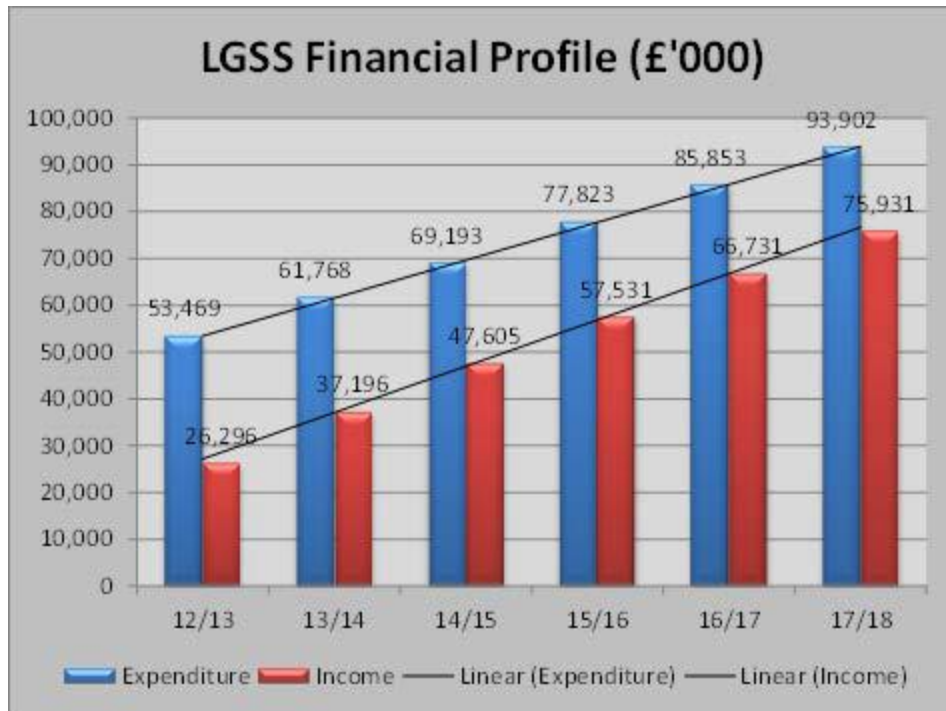
Q4) What do LGSS-related payments represent?

Logically, revenue and debtors in LGSS's books should reflect expenditure and creditors in LGSS customers' books. LGSS's four largest customers are the two founding county councils plus Norwich City Council and Northampton Borough Council. How do payments labelled "LGSS" in the two county councils and payments to the county councils from Northampton Borough and Norwich City reconcile with LGSS's accounts? In other words:

- a) Do they represent LGSS expenditure, in which case are they unrelated to LGSS debtors?
- b) Do they represent LGSS revenue, in which case where does LGSS's gross expenditure originate from, that in the draft accounts was split into six directorates and added up to £62.505m? (the final accounts added the £700k dividend payment to make £63.205m).
- c) Do the LGSS labelled payments in the customers' supplier payment data somehow represent both income and expenditure in LGSS's books? In which case, what is the accounting mechanism that produces the gross expenditure and gross income items in the LGSS CIES?

Q4) How big is LGSS?

The financial profile table shown on page 5 of the final LGSS financial statements shows essentially linear growth of expenditure and income from 2012/13 onwards.



If the expenditure trend line is extended two years further back, to 10/11 when LGSS came into being, the extrapolated expenditure for that year would have been around £37.3m, which is close to the £35.305m "Net as is baseline" that featured in the Management Summary for Local Government Shared Services (LGSS) of 14th June 2010 – effectively the business case for LGSS.

My question relates to the "£83m business" claim made for LGSS as far back as October 2011 (LGSS website), and repeated in the LGA commissioned report of August 2012 ("Services shared, costs spared?"). Where did the £83 million statistic come from?"